

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

THOMAS D. GILLIS,

Plaintiff

vs.

SPX CORPORATION INDIVIDUAL ACCOUNT  
RETIREMENT PLAN and SPX RETIREMENT  
ADMINISTRATIVE COMMITTEE,

Defendants

Civil Action No.: 03-12389-GAO

**AFFIDAVIT OF THOMAS D. GILLIS**

I, Thomas D. Gillis, being duly sworn do depose and state as follows:

1. I am the Plaintiff in the above-captioned matter.
2. I was an employee of SPX Corporation or an unrelated predecessor company between May 10, 1965 and June 20, 2002. Attached to my Affidavit as **Exhibit A** is a true copy of the Complaint. Attached as **Exhibit B** is a true copy of the Defendants' Answer and Affirmative Defenses to Plaintiff's Complaint. See ¶¶9, 11 to Exhibits A and B.
3. I began my career at Blue M Electric and accrued pension benefits under the Blue M Electric Pension Plan ("Blue M Plan") from May 10, 1965 until July 1, 1982. See Exhibit A and B, ¶12. See **Exhibit C**, attached hereto as a true copy of relevant portions of the GSX Plan Article II (1) and Appendix A, as produced by the Defendants.
4. General Signal Corporation ("GSX") purchased Blue M Electric in 1981 and merged the Blue M Plan with the Corporate Retirement plan of General Signal Corporation ("GSX Corporate Plan" or "GSX Plan"). See Exhibit C, Bates Nos. 59 and 158; Exhibits A and B, ¶12.

5. I accrued pension benefits under the GSX Plan from July 1, 1982 until I became a participant in the SPX Corporation Individual Account Retirement Plan ("SPX Plan") on December 1, 1998. See Exhibit C, Bates No. 158; See, also, Exhibits A and B, ¶12. Attached hereto as **Exhibit D** is a relevant portion of the SPX Plan, §B-31(c).

6. Prior to the date on which the GSX and SPX Plans merged (November 30, 1998), I was age 55 and had completed more than five (5) years of service, thus qualifying for early retirement under the GSX Plan. Attached as **Exhibit E** is a relevant portion of the GSX Plan, Article IV(2) and Article III(1), Bates Nos. 59, 77 and 88.

7. I became a participant in the SPX Plan on December 1, 1998, after the SPX Plan merged with the GSX Plan, effective as of November 30, 1998. See Exhibits A and B, ¶¶10, 12; Exhibit D, SPX Plan §B-31(b) and (c), Bates No. 405.

8. The SPX Plan was amended effective as of January 1, 1998, to reflect the merger with the SPX Plan, and to include a separate benefit structure for former GSX employees. Attached hereto as **Exhibit F** are relevant portions of the SPX Plan §1.1, Bates No. 227 and §B-31, Bates Nos. 405-424 (Special Provisions for former GSX Employees) and Bates Nos. 468-69 (amendment history).

9. The total pension due from the SPX Plan is comprised of my benefit accruals under the Blue M Plan, the GSX Plan and the SPX Plan. See Exhibits A and B, ¶11. Attached hereto as **Exhibit G**, relevant portions of the GSX Plan Summary Plan Description, Bates Nos. 179, 187 and **Exhibit H**, relevant portions of the SPX Plan §B-31(l), Bates No. 413.

10. In order to determine my accrued benefit under the cash balance formula, the SPX Plan converted my accrued benefit in the GSX Plan, which included my Blue M Plan accrued

benefits and GSX Plan early retirement subsidy, to its lump sum actuarial equivalent<sup>1</sup> as of December 31, 1998, and treated the sum as my “opening Account Balance” on January 1, 1999 under the SPX Plan. Exhibit A and B, ¶15. Attached as **Exhibit I**, are relevant portions of the SPX Plan, §B-31(j), first paragraph, and §B-31(j)(3), Bates Nos. 411-12. See **Exhibit J**, a true copy of SPX letter determining claims referring to my early retirement subsidy.

11. My employment with the SPX Corporation terminated on June 20, 2002 at age 59½. A true copy of my termination agreement is attached hereto as **Exhibit K**. Because of my age and service, I met the requirement for a lump sum distribution of benefits from the SPX Plan in 2002. A true copy of relevant portions of the SPX Plan, §B-31(k), Bates No. 413 and SPX Plan §6.8, Option 7, Bates No. 257-258 is attached hereto as **Exhibit H**.

12. The SPX Plan, a defined benefit plan, was amended as of July 1, 1997 to convert from a traditional defined benefit plan to a cash balance plan. See Exhibit F, Bates No. 227; Exhibits A and B, ¶13.

13. Effective as of January 1, 1998, the SPX Plan was amended to reflect the merger with the GSX Plan and to include three separate and alternative benefit formulas for former GSX employees. See Exhibit F, Bates Nos. 468-69, and §B-31(k), Bates No. 413.

14. No prior notice of this amendment was given to me or former GSX employees participating in the SPX Plan advising of any cutback in benefits.

15. Under §B-31(k) of the SPX Plan, and former GSX Plan participant, upon termination of employment with SPX, a former GSX Plan participant is entitled to the greatest of

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<sup>1</sup> My accrued benefits under the GSX and Blue M. Plans was originally expressed as a monthly payment for my life or life expectancy. The present value of my stream of payments, expressed as a lump sum, is the actuarial equivalent of those payments. The SPX Plan permits the payment of the Transition benefit at early retirement in the form of a lump sum distribution under §B-31(p) and (1)(1), Bates Stamp No. 423 and 414, Exhibit F.

his or her: (1) Accrued benefit; (2) Transition Benefit; or (3) December 31, 1998 GSX Accrued Benefit. See Exhibit H, Bates No. 413.<sup>2</sup>

16. The Transition Benefit was intended to provide a special alternative benefit to older employees who would otherwise be hurt by the conversion from the GSX Plan, a traditional defined benefit plan to the SPX Plan, a cash balance plan. **Exhibit L** contains the relevant portion of the “Building For Tomorrow” written documentation, page 35; Supplement to Summary Plan Description General Signal Transition Benefit, Bates Nos. 592-593; and Bates Nos. 504-506, 601, 649.

17. The Transition Benefit was specifically designed to address the reduced future benefit accruals that older former GSX Plan participants would receive under the cash balance formula of the SPX Plan. **Exhibit L**.

18. To qualify for the Transition Benefit, an SPX Plan participant must have: (a) participated in the GSX Plan; (b) participated in the SPX Plan on January 1, 1999, (c) have attained at least age 45 and have at least 5 years of Continuous Service under the SPX Plan on January 1, 1999,<sup>3</sup> (d) retire early (after age 55 and before age 65); and (e) not have accepted an early retirement incentive under the SPX Plan. **Exhibit M** is a true copy of the relevant portion of the SPX Plan §B-31(p), Bates No. 423

19. I met all of these requirements for receiving a Transition Benefit under the SPX Plan.

<sup>2</sup> Because I accrued benefits under the SPX Plan after December 31, 1998, the December 31, 1998 GSX Accrued Benefit would result in the smallest of these three benefit alternatives for me, and is not relevant to my case.

<sup>3</sup> Under the terms of the SPX Plan, my GSX service was treated as Continuous Service under the SPX Plan, Exhibit F, SPX Plan §B-31(d), Bates Stamp No. 405, so as of January 1, 1999 I had 5 years Continuous Service under the SPX Plan.

20. No employee disclosure regarding the Transition Benefit unambiguously advised me that my early retirement subsidiary that I earned under the GSX Plan would be subtracted from my Transition Benefit. Exhibit L (including Bates Nos. 649, 592-593).

21. The SPX Plan, as amended and restated, effective as of January 1, 2001 is the document that purports to describe my pension benefits. Exhibits A and B, ¶¶24.

22. I became a participant in the SPX Plan on December 1, 1998 under §B-31(c) of the SPX Plan and, as such, am a participant as described under ERISA §(7), 29 U.S.C. §1003(7). See Exhibits A and B, ¶¶ 1, 10. A true copy of the relevant portion of the SPX Plan §B-31(c), Bates No. 405, is attached hereto as Exhibit F.

23. I first made a written request for Plan documents from the SPX Plan Administrator on October 22, 2001. See **Exhibit N**, Bates Nos. 507-509, a true copy of my written request for plan documents.

24. The Plan Administrator did not honor my request for Plan documents until July 18, 2002, which was 230 days after the statutory deadline for response, and provided documents only in response to the demand of legal counsel that I was forced to retain. See **Exhibit O**, Bates Nos. 536-37, letter of Plaintiff's counsel repeating request for the documents, 541-542, a true copy of the transmittal letter from SPX's counsel regarding the Plan documents.

25. On or about September 27, 2002, I submitted a claim for benefits under the SPX Plan for my benefits, none of which have been paid to date. See **Exhibit P**, Bates Nos. 545-558, a true copy of my claim for benefits.

26. On March 18, 2003, the SPX Plan Administrator denied my initial claim of September 27, 2002 for a lump sum distribution and disputed the calculation of the benefits due me. See Exhibit J, Bates Nos. 567-569.

27. On May 2, 2003, I submitted an administrative appeal of the Plan Administrator's denial in accordance with the appeal process described by the Plan Administrator on the third page of its March 18, 2003 letter. See **Exhibit Q**, Bates Nos. 570-577, a true copy of my appeal of the denial of my claim.

28. The SPX Plan Administrator did not respond to my appeal within 120 days, as required under its own claims policy, stated on the third page of the SPX letter dated March 18, 2003. See Exhibit J.

29. The SPX Plan Administrator did, however, provide me a written denial of my appeal on November 24, 2003, substantially outside the deadline for the response under the Plan Administrator's claims procedure, and only after my attorney advised the Plan Administrator that he would be filing my lawsuit, having exhausted my administrative remedies. **Exhibit R**, Bates Nos. 579-598, a true copy of the written denial of my appeal.

30. Attached hereto as **Exhibit S** is a true copy of the SPX Plan, §2.1(b), Bates No. 228.

Signed under the pains and penalties of perjury, this 7th day of February, 2006.

/s/ Thomas D. Gillis  
Thomas D. Gillis